

HOUSE COMMITTEE ON JUDICIARY

SUBCOMMITTEE ON CRIMINAL LAW

January 20, 1997 Hearing Room 357

3:15 pm Tapes 1 - 3

**MEMBERS PRESENT:**

Rep. JOHN MINNIS, Chair

Rep. JOANN BOWMAN, Vice-Chair

Rep. PETER COURTNEY

Rep. FLOYD PROZANSKI

Rep. LANE SHETTERLY

Rep. RON SUNSERI

Rep. LARRY WELLS

**MEMBER EXCUSED:**

**STAFF PRESENT:**

SCOTT LUMSDEN, Counsel

BRIAN HIGGINS, Administrative Support

**MEASURE/ISSUES HEARD:** Public Hearings on House Bills 2152, 2154, 2156, 2157, 2158, and 2159

**These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.**

<b>Tape/#</b>	<b>Speaker</b>	<b>Comments</b>
TAPE 1, A		
<b><u>HB 2152 - PUBLIC HEARING</u></b>		
05	Chair Minnis	Opens public hearing on HB 2152

15	Al Chandler	Assistant Director, Department of Corrections >submits written testimony ( <b>EXHIBIT A</b> )
30	Rep. Prozanski	Do we have enough room in system and what are the transportation costs?
37	Chandler	Limited number of inmates would be involved >enter into intergovernmental agreements with counties as to costs >state often provides the transportation - no additional cost
44	Rep. Wells	These people would not be [SB] 1145 offenders, instead are more serious offenders who would not be spending less than one year.
46	Chandler	Correct
47	Rep. Shetterly	Has any provision been made to keep these people in contact with their local district attorneys? What are the issues there?
51	Chandler	They would be made available to whatever legal counsel needed. They would not be denied access to legal counsel.
62	Michael Bouchard	Ex-felon
		>There is a great expense to the taxpayers for just 5 inmates.
		>family visitation rights need to be considered >when an inmate is in OCIC, they are not allowed visitation with family members
	(Tape Malfunctions)	
		Calls subcommittee back to order

201	Chair Minnis	>bill is loosely worded >is 5 people per county, per state?
212	Chandler	5 persons total statewide
213	Chair Minnis	At any given time?
214	Chandler	Yes. The basis is the fact we have a premium number of beds available.
222	Rep. Shetterly	You mentioned the situation in Coos Bay. Is this being done already?
226	Chandler	In the case from a year ago we made an arrangement to do that on a one-time situation.
230	Rep. Sunseri	Who determines unusual?
232	Chandler	I think it is a dialogue between the state and county. >we are not trying to make it complicate
236	Rep. Sunseri	But it isn't loosely determined...
241	Chandler	Generally, the determination can be made by reviewing their record.
245	Rep. Prozanski	Have there been any arrangements made as to whether they will be held in a facility close to their jurisdiction or anywhere in the state?
254	Chandler	Our intent would be to keep them close to the county from which they came as possible.
260	Chair Minnis	Is there any reason why we wouldn't want to go to the judge in a brief hearing to assess risks before transfer.
277	Jef Van Valkenburgh	Department of Justice



		>introduces Ernie Delco, Parole Officer >submits written testimony, <b>(EXHIBIT B)</b>
415	Continues reading written testimony	
<b>TAPE 2, A</b>		
	(tape malfunctioned - no testimony missed, but begins at counter stop 126)	
138	Rep. Sunseri	What kinds of problems have you encountered with 30 days?
141	Ernie Delco	What we have found is anxiety about returning to their communities after being in controlled environments.  >the structure to return them to their communities works basically well  >by using some of the principles of boot camp and applying them to the transition, they're more likely to be successful
167	Rep. Bowman	30 days after release, do they have a parole officer or some other supervision?
171	Delco	Parole officers know well in advance that these individuals are being released.  >If they violate the conditions of their transition period, then they risk being returned to the institution.  >They could be returned to an institution other than boot camp.
188	Rep. Bowman	After they have completed their 30 day transition period, are they or are they not on parole or probation?
191	Delco	They're on parole.

193	Rep. Bowman	So, how will this bill change their supervision in the community?
195	Bill Beers	<p>Superintendent of Shutter Creek</p> <p>&gt;we're here to address their technical status.</p> <p>&gt;I can grant men up to 30 months of their prison sentence.</p> <p>&gt;public safety would be better served if we keep them under prisoner status longer</p> <p>&gt;instead of returning for 60 days, they could then be returned to finish their entire sentence</p>
212	Chair Minnis	You're saying people are failing because the transitional period is too short.
216	Beers	Some fail after 30 days, and then their sanctions are reduced because they are no longer under prisoner status.
221	Chair Minnis	What is the term of parole after completing their sentence? This lasts how long?
224	Beers	It's set in guidelines ranging from one to three years, but some cases can go longer.
228	Rep. Prozanski	When inmate comes back, is there more hands on working with inmate? Are we attempting to reestablish inmates by helping them get jobs, treatment, etc.?
239	Delco	<p>There is a number of things the superintendent can do if there is a violation during the transition period.</p> <p>&gt;the goal is to assist these individuals in the community so as to reduce the recidivism rate</p>
265	Rep. Shetterly	We have a failure percent of 9% in the first 30 days?

267	Delco	That's right.
268	Rep. Shetterly	Do you know what the return rate would be after the first 30 days but still on probation?
270	Delco	There are a lot of ways to measure this. >about 10% ahead of the control group
283	Rep. Bowman	Asks for clarifications of whether an individual who commits a violation within 90 days is returned to prison or to boot camp.
291	Delco	They would come back to boot camp.
315	Chair Minnis	So, they would not necessarily go back to the institution.
316	Delco	Some people don't. We have to make a judgment call.
323	Rep. Bowman	With BM 47 and Measure 11, wouldn't it be easier to turn them over to community corrections?
329	Delco	It is a public safety issue. >Every day we are releasing people substantially earlier than they were sentenced to.
340	Chair Minnis	As I understand it, boot camp is more expensive than returning someone to the general population. >but if someone continually fails, it is safer to put them back in boot camp than in the general population
356	Rep. Courtney	If an individual doesn't graduate, are they returned to the institution? >asks how big classes are
365	Beers	They start as big as 80.

367	Rep. Courtney	But not all of them are allowed to graduate.
368	Beers	We have different circumstances.
375	Rep. Courtney	You would not continue them for another month or two. How does this apply to the 90 days?
380	Beers	Comments on recycles >We have had men in the program for as long as 14 months.
400	Rep. Courtney	What is the total number of people that have been in the program?
404	Beers	We have graduated 384.
408	Rep. Bowman	How many actually entered the program during this time?
409	Beers	1100
412	Chair Minnis	"Would you consider this a substantial failure rate?"
<b>TAPE 1, B</b>		
03	Beers	Yes, I would. >Over 200 of those were subsequently put into other platoons.
06	Rep. Courtney	Asks for clarification on people lost along the way. >These are different statistics than those who failed once they were out. >If we're going to lose them, let's lose them before they graduate and not after they're out.





97	Rep. Prozanski	What are the current numbers?
98	Dolecal	I do not have those with me.
100	Rep. Prozanski	I'm just trying to get a feel for how big of a problem this is.
103	Rep. Shetterly	Is the case mentioned in testimony the result of a first impression?
106	Jef Van Valkenburgh	Legal Counsel for Department of Corrections
		>Yes, this was a case of first impression
114	Rep. Bowman	Concerned about young criminals not having access to visitors >it looks like this is not a problem yet
122	Dolecal	There is a procedure for appeal process to the superintendent.
130	Rep. Bowman	HB 2154 would change that process. Correct?
131	Dolecal	It would add a trial-like hearing which would require more time and resources.
138	Van Valkenburgh	It would allow the department not to change the current process. >the lawsuit pending challenges a right that doesn't exist.
146	Rep. Wells	If the suit is won, would it eliminate the need for this legislation?
151	Van Valkenburgh	The lawsuit has taken some twists and turns which has changed the issues a bit. >The legislation is important so as to foreclose the legal argument for the right to a trial-like hearing.

169	Chair Minnis	The discussion still needs to be held whether this is the policy of Oregon.
175	Rep. Shetterly	In the current case, is the denial the end, or is there a process beyond that.
180	Van Valkenburgh	The argument remains that it is judicially reviewable under APA [Administrative Procedures Act].
182	Rep. Shetterly	But that is not addressed by this legislation.
183	Van Valkenburgh	It actually is. Subsection 5 of 183.315 is the judicial review provision.
189	Chair Minnis	So, this would end judicial review
190	Van Valkenburgh	This is not to say that it is unreviewable in some other form.
198	Bouchard	Describes visitation incident in 1991
		>this bill would take away judicial review rights of non-criminals
		>an inmate can appeal this decision to the superintendent
229	Chair Minnis	How did you resolve your issue?
230	Bouchard	Responds that rights were taken away for 30 days.
233	Chair Minnis	The two officers didn't work out their dispute.
234	Bouchard	Reponds that he is unaware of officers's dispute.
236	Chair Minnis	How is it that you ended up with two different directions?
240	Bouchard	When you are an inmate, you have very little rights.

245	Chair Minnis	Did you ask a supervisor to clarify?
246	Bouchard	The issue is not what happened to me. >The point is that relatives do not have the right to appeal, if you take it away.
264	Rep. Shetterly	Is this a correction which could be taken up with the Corrections Ombudsman.
268	Chair Minnis	You are not planning on going back, are you?
270	Bouchard	I can't say whether I will go back or not. >if visitors are cut off, you are cutting off man's hope.
277	Chair Minnis	You're perception is unique, but in some way you are internally indicting the Department of Corrections.
284	Bouchard	I have been held accountable for my actions. >even though visitation is a privilege and not a right, if they are stripped of this privilege they have no rights. >a man's whole purpose is to get back into the real world but without a support network, then the person is left to wallow in the system.
313	Chair Minnis	I am not sure if reasons stated are reasons not to enact legislation. >unsure it is a good idea to subject this whole process to the Administrative Procedures Act
320	Bouchard	I agree, but the worst-case scenario offered is extreme.
342	Chair Minnis	Closes Public Hearing on HB 2154
<b><u>HB 2156 - PUBLIC</u></b>		

<b>HEARING</b>		
344	Chair Minnis	Opens public hearing on 2156 >this allows us to put people over 40 into the boot camps if they are physically able.
358	Al Chandler	Assistant Director for Institutions, Department of Corrections
		>submits and reads from written testimony, <b>(EXHIBIT D)</b>
375	Chair Minnis	Do you currently have a medical examination?
376	Chandler	Absolutely.
383	Rep. Wells	Why was this not put into legislation in the first place?
385	Chandler	We didn't have prior experience. Our experience now tells us that people 40 years or older would benefit from boot camp.
395	Chair Minnis	Any increased liability?
396	Chandler	No increased liabilities.
406	Chair Minnis	Closes public hearing on HB 2156
<b>HB 2157 - PUBLIC HEARING</b>		
408	Chair Minnis	Opens public hearing on HB 2157 >reads relating-to clause
		Assistant Director for Correctional Programs for Department of Corrections

418	Steve Ickes	>introduces Katherine Knox, Health Services Administrator >submits and reads from written testimony, <b>(EXHIBIT E)</b>
<b>TAPE 2, B</b>		
10	Ickes	Continues reading of written testimony
39	Chair Minnis	It sounds to me like you've already done this.
40	Ickes	We proceeded based on the clear direction from the last session.
45	Chair Minnis	This direction comes from what?
45	Ickes	Ways and Means reduced our budget and then left a budget note.
51	Chair Minnis	So you are operating under no statutory authority.
52	Ickes	It is implied.
54	Rep. Shetterly	I understand that you are operating under rights provided by OMAP. What would prevent department from further establishing rights even below the OMAP rates?
62	Katherine Knox	Administrator of Health Services Division >doesn't specify OMAP rights due to lack of statutory language
72	Rep. Shetterly	It seems like the language goes beyond the rationale.
75	Chair Minnis	I think she said there is not a good way to write this down.
		Captain, Lane Co. Sheriff's Office

80	Dan Heuvel	>introduces Kathy Page, Corrections Health Director, Multnomah County
		>submits and reads written testimony, <b>(EXHIBIT F)</b>
94	Kathy Page	Program Manager, Multnomah County Corrections Health Program
		>prior to incarceration most persons in custody are indigents >the state now pays twice what these people would pay if they were not incarcerated
112	Rep. Bowman	I understand this would give Department of Corrections the authority to change rates.
116	Page	We would hope that we could amend ORS 169.166 to have the same language.
122	Chair Minnis	You want to amend an entirely different statute.
126	Ed Patterson	Oregon Association of Hospitals and Health Systems >introduces Kathleen Dowling, Chief Financial Officer, Salem Memorial Hospital >language in the bill gives broad authority to determine rates >asks whether it is good public policy to say as an agency do not have to pay prevailing price for services >this bill singles out hospitals in a discriminatory way >puts burden for cost on the hospital >the bill transfers an inordinate amount of burden on rural hospitals >recovery for costs will then be shifted to the paying patients.
		Vice-President Fiscal Service, Salem Hospital

185	Kathleen Dowling	<p>&gt;Salem Hospital has had 37 inpatients in last 6 months of which \$215,000 has been written off</p> <p>&gt;comments that not receiving enough to even cover the costs of care</p> <p>&gt;inmate patients cost more to take care of due to staffing and segregation issues</p> <p>&gt;we do not share in the federal Medicare program</p>
207	Chair Minnis	Are there also physicians' charges?
208	Dowling	Those are strictly hospital charges as addressed in the bill.
212	Rep. Wells	I assume we are talking about capitation rates, or fee rates. Do you handle capitation plans?
214	Dowling	Yes.
218	Rep. Wells	Asks for clarification of whether it is a fee schedule or capitation schedule
222	Dowling	This addresses a fee schedule.
224	Rep. Wells	The fee schedule part of OMAP
225	Patterson	<p>Comments on problem with way rule was adopted regarding reimbursement rates</p> <p>&gt;this fee schedule is inappropriate for this type of service</p>
240	Rep. Wells	There has been an attempt to move more people to the capitative rate because it is cheaper than the fee schedule
		<p>Prior to capitative rates, there were reimbursement and fee schedules.</p> <p>&gt;these rates were higher before we moved into</p>



249	Patterson	capitation under the Oregon Health Plan >At Salem Hospital, they are getting 42% reimbursement rate while costs are 72% of the dollar.
266	Rep.Wells	Asks for clarification of motive to move more people to capitative rates if the fee schedules are lower.
272	Patterson	We reject reducing the Corrections budget on to the backs of hospitals. >inmates are not eligible for Oregon Health Plan, so can't pay capitative rates
291	Van Valkenburgh	The authority is in chapters 179, 421 and 423. It can promulgate rules for the governance of its institution.
297	Chair Minnis	These rules can not be made in contradiction to existing statutory law.
298	Van Valkenburgh	Correct, but this is not in contrast to existing statutory law.
303	Chair Minnis	Is there a lawsuit pending?
304	Van Valkenburgh	No, there is not.
306	Chair Minnis	It is uncautionable to have budget committees change reimbursement policy.
313	Van Valkenburgh	The department promulgated rules through the APA
320	Chair Minnis	Some members in the legislature would like greater control over rules crafted by agencies.
332	Van Valkenburgh	No department is required by the rules to provide services.
336	Chair Minnis	Except these individuals are unlikely turn away patients.

341	Rep. Bowman	We should not being pay more for health care as a state as it uses more taxpayers dollars.
355	Chair Minnis	The point is that rates are less than what Oregon Health Plan pays
362	Rep. Wells	Asks for clarification as to how fees can be more after they enter the system  >Isn't the motive to have them pay less and not move them to the capitative rate?
380	Dowling	This is why the Department of Corrections wants to simply adopt the standards and reimbursement methodology of another committee.
402	Rep. Sunseri	The language is nebulous because you could tie these to any rates you would like.
411	Dowling	It is not our intention to adopt arbitrary rates.
425	Chair Minnis	Something needs to happen here. I think there needs to be a bit more dialogue as to what the appropriate reimbursement rate is.
<b>TAPE 3, A</b>		
17	Michael Bouchard	There are federal and state provisions to exact cost back from the inmate.  >why can't inmates be eligible under Oregon Health Plan  >suggests that inmates have ability to pay for coverage
46	Chair Minnis	So, you're suggesting that inmates pay for their coverage
48	Bouchard	The only caveat to that are those inmates who are medically unassigned.

55	Chair Minnis	Close public hearing on HB 2157
<b><u>HB 2158 - PUBLIC HEARING</u></b>		
57	Chair Minnis	Opens public hearing on HB 2158.
61	Les Dolecal	Inspector General, Department of Corrections >submits and reads from written testimony <b>(EXHIBIT G)</b>
88	Rep. Bowman	How would someone know where in the agency to find someone who is an advocate for their issues?
93	Dolecal	Between the Department and the Governor's office we could find a resource to address the problem.
98	Rep. Bowman	Expresses concern over the Department of Corrections being the resource for handling the problems.
109	Dolecal	Responds that complaints can be brought to Inspector General's Office >people within the branch are objective investigators >also have access to Minority Affairs Officers
125	Rep. Prozanski	It's your testimony that there is no need for that other person. two follow-ups; funding for Inspect's Division
128	Dolecal	That's correct.
130	Rep. Prozanski	Who is the Governor's Advocate for Public Safety
131	Dolecal	Sheila Reeve.
132	Rep. Prozanski	Is this an appointment from Governor's Office.
133	Dolecal	I believe she is.

134	Rep. Prozanski	Your funding is through what department.
135	Dolecal	It's through the general fund.
135	Rep. Prozanski	Separate from the DOC budget.
136	Dolecal	No. It is part of the general fund for the DOC.
137	Rep. Prozanski	Who calls the shots as to who gets what? My concern is that there appears to be a conflict.
142	Dolecal	Comments on the structure of Corrections Division
		>independent branch within the agency with a separate budget
163	Rep. Shetterly	If you have a problem with visitation, is this something your office would handle.
166	Dolecal	Not necessarily. The superintendents have the final authority.
		>if there is a violation then it may come to us
171	Rep. Shetterly	You wouldn't get a review on the merits of the decision?
172	Dolecal	Generally not.
173	Rep. Bowman	Asks for examples of cases the office is involved in.
175	Dolecal	A variety of them: staff misconduct cases, inappropriate relationships; inmate misconduct, violations of rules and procedures by staff
188	Rep. Bowman	Asks for percentage of employee vs. inmate cases.
191	Dolecal	In 1996, 261 cases against staff were investigated and 71 allegations against inmates

196	Rep. Bowman	Was there any merit in the allegations against staff?
197	Dolecal	Approximately 1/3 of allegations were substantiated.
201	Rep. Courtney	Asks for history of creation of Inspector's General position
205	Chair Minnis	Suggests this information could be brought at a later date.
208	Rep. Courtney	There were some serious allegations. >we looked for ways to bring in some objectivity
221	Bouchard	The police will be policing the police if the Inspector General takes over. >comments there are no teeth in the program >when there is no oversight, there is no abuse >redundancy between Oregon State Police and Inspector General's roles in investigations
262	Chair Minnis	You bring up a good point and we will try to get the Inspector General to address that when he comes in.
268	Bouchard	Comments that there should be someone who is educated in corrections issues in the Governor's Office
276	Rep. Courtney	I am willing to discuss independent role of Inspector General >we need to keep in mind that the Ombudsman position is an entirely different role
297	Rep. Bowman	Expresses concern about lack of funding for advocate for inmates and their families.
318	Chair Minnis	I think we do need to define whether, with the growing Corrections system, we need an advocate in addition to the Inspector General.

322	Bouchard	Federal government has matching funds for an ombudsman through the Board of Prisons.
332	Ingrid Swensen	Oregon Criminal Defense Lawyer's Association
		>willing to postpone testimony until committee gets more information on this position
		>having legislation that permits the appointment and funding of Ombudsman does not do any harm even though it has not been funded
		>I don't see the need to get rid of the legislation at this point.
358	Chair Minnis	Adjourns meeting at 5:21 pm

Submitted By, Reviewed By,

BRIAN HIGGINS, SCOTT LUMSDEN,

Administrative Support Counsel

**EXHIBIT SUMMARY**

**A - Written testimony on HB 2152, Al Chandler, 1 p.**

**B - Written testimony on HB 2159, Scott Taylor, 2 pp.**

**C - Written testimony on HB 2154, Les Dolecal, 2 pp.**

**D - Written testimony on HB 2156, Al Chandler, 1 p.**

**E - Written testimony on HB 2157, Steve Ickes, 2 pp.**

**F - Written testimony on HB 2157, Dan Heuvel and Kathy Page, 1 p.**

**G - Written testimony on HB 2158, Les Dolecal, 1 p.**